

REMARKS

Claims 1-6, 8-10 and 14-17 are pending in the application.

Support for the limitation presently introduced to Claim 16 is found in the application in page 19, line 9.

The rejection of Claim 16 under 35 U.S.C. 112 second paragraph is believed addressed and overcome by the present amendment.

The invention is directed to a thermoplastic molding composition, the essential components of which are poly(ester)carbonate, a graft polymer that contains a graft base the particle size ( $d_{50}$ ) of which is 0.20 to 0.35  $\mu\text{m}$ , a mixture of phosphorous compounds, and fluorinated polyolefin.

The invention resides in the finding that the mechanical properties of the composition critically depend on, inter alia, the particle size of the graft base.

Claims 1-6, 8-10 and 15-17 stand rejected under 35 U.S.C. 102(e) said to be anticipated by Eckel et al (U.S. Patent 5,672,645). For the record, the omission of presently pending Claim 14 from the stated rejection is taken as an oversight.

Eckel et al disclosed a thermoplastic molding compound that contains polycarbonate, vinyl copolymer, a graft polymer, a mixture of phosphorous compounds and a fluorinated polyolefin. Importantly, the average particle diameter ( $d_{50}$ ) of Eckel et al's graft copolymer is 0.05 to 2  $\mu\text{m}$  (col. 6 lines 19-20).

The standard for anticipation is one of strict identity. To anticipate a claim for a patent, a single prior art document must contain all the essential elements of the claimed invention. In Re Donohue 226 USPQ 619.

Set against this standard Eckel et al cannot reasonably be said to anticipate the present invention that mandates a different particle size limitation.

Reconsideration and retraction of the rejection under section 102 is requested.

The claims stand rejected said to be unpatentable over Eckel et al (U.S. Patent 5,672,645) in view of Bödiger et al (U.S. Patent 5,849,827).

Eckel et al was discussed above and its shortcomings in the present context were noted.

Bödiger et al that disclosed a composition containing polycarbonate, an optional rubber containing graft copolymers and a flame retardant. Presently relevant is the particle size ( $d_{50}$ ) of the graft base said – column 5, line 12 – to be in the range of 0.05 to 2  $\mu\text{m}$ .

Bödiger et al is not seen as augmenting Eckel et al's disclosure in any presently relevant way.

While the cited art is respectfully asserted to fall short of the *prima facie* obviousness case, the Applicants call attention to the Eckel et al declaration that was filed in the course the prosecution of the parent patent application. The examples presented in the declaration clearly point to the criticality of the particle size in the context of the invention. Attention is directed to the properties of the three compositions reported in the declaration. The compositions differed only in terms of the particle sizes of their included graft polymers. The results show that the composition in accordance with the invention – Example A; particle size 0.3 microns- features higher tensile modulus, higher tensile strength and greater resistance to stress cracking than do corresponding compositions where the particle sizes were outside the claimed range – Example B where the particle size was 0.4 microns and Example C wherein particle size was 0.19 microns. This dependence of the

properties of the composition on the tested parameter has not hitherto been described or suggested by the cited references.

Applicants respectfully submit that the results rebut the allegation of obviousness even if the cited reference properly combined for the *prima facie* case.

Believing the above represents a complete response to the Office Action and that the application is in condition for allowance, Applicants request the earliest issuance of an indication to this effect.

Respectfully submitted,

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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**IN THE CLAIMS:**

Claim 16 has been amended as follows:

16. (Amended) The molding composition according to Claim 1 further containing a very finely divided compound having average particle diameter of less than or equal to 200 nm comprising an element from main groups 1 to 5 or from subgroups 1 to 8 of the periodic table of the elements, in combination with at least one element selected from the group consisting of oxygen, sulphur, boron, carbon, phosphorus, nitrogen, hydrogen and silicon.